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February 21, 2012

R.J. Larizza, State Attorney, Seventh Judicial Circuit of Florida.
Office of the State Attorney
251 N. Ridgewood Ave.
Daytona Beach, FL 32114

Dear Honorable R.J. Larizza:

I am writing respectfully to charge Mr. McKinley Coffin with violations of Chapters 838.022 and 837.02 Florida Statutes and request that an investigation be conducted into these criminal matters.

On October 10, 2011, the then acting Director of the Department of Public Protection, McKinley Coffin, made the decision to fire me as an Investigator with the Volusia County Beach Patrol in the absence of any Investigative Report¹ Mr. Coffin then instructed the Director of the Department of Beach Safety, Kevin Sweat, to notify me orally that if I did not resign immediately that I would be fired². Mr. Coffin also refused to tell Director Sweat who had made the decision that I be fired³.

On October 12, 2011, Internal Affairs Investigator, Captain Dofflemyer, submitted her Investigative Report which found that: "He (Captain Gardner) did not promise or provide any special privileges or show favoritism toward Gittner because of their relationship and has not been her direct supervisor"...."Gardner has not been assigned as her (Winters) direct supervisor on a day to day basis"..."No evidence is present to substantiate Gardner has concealed evidence or information involving administrative or criminal violations by Beach Safety staff or attempted to influence or did influence promotion, recognition or special assignment for a person with whom he was romantically involved."

¹ Sworn Statement of the Director of the Department of Beach Safety, Kevin Sweat, dated December 13, 2011 Page 76 Lines 1-25

² Sworn Statement of the Director of the Department of Beach Safety, Kevin Sweat, dated December 13, 2011 Page 73 Lines 23-25, Page 74, Lines 1-18.

³ Sworn Statement of the Director of the Department of Beach Safety, Kevin Sweat, dated December 13, 2011 Page 73 Lines 23-25, Page 74, Lines 1-18.

Notwithstanding the findings contained in the Investigative Report, I was served with a public document, Notice Of Intent (NOI) to Dismiss dated, October 18, 2011, in which Mr. Coffin states, as a basis for dismissal, that I violated Section 86-453(12) of the Division of Beach Safety Policies and Procedures by knowingly giving a false statement to Director of the Department of Beach Safety, Kevin Sweat and Mr. Coffin in the presence of the Director Sweat.

To wit:

"During the time that you were involved with Officer Gittner, you were asked by a supervisor whether you were having an inappropriate relationship with her, which you denied. More recently, I asked you whether there was anything in your background which could cause embarrassment to the Division and you said, "No." Clearly these statements were false and misleading."

Over a year ago I was asked by Director of the Department of Beach Safety, Kevin Sweat, if I was in a relationship with another Officer named Cara Gittner. Officer Gittner and I were not in a relationship at the time and I responded truthfully that we were not.

Furthermore, Mr. Coffin has never asked me if there "was anything in my background which could cause embarrassment to the Division." In late 2010, I requested a meeting with Mr. Coffin to discuss the position of Deputy Chief of Beach Safety in the presence of Director Sweat. Mr. Coffin did not ask me the general question stated in his NOI but instead made the following statement: "Obviously, we're in the midst of a lawsuit here. If you are appointed to Deputy Chief, are we going to find out that you had knowledge of the Simmons and Tameris allegations prior to it being reported?" to which I truthfully responded "No, absolutely not."

On October 24, 2011, I sent a response letter to Mr. Coffin, notifying him in addition to numerous County Policy and Merit Rule violations, that he had violated Sections 112.532, and 868.22 Florida Statutes by intentionally and with corrupt intent, manufactured the alleged false statements. In that response, I also specifically challenged the veracity of Mr. Coffin's statements regarding any false statements I allegedly made. We now know from the Sworn Statement of the Director of the Department of Beach Safety, Kevin Sweat, and Deputy Chief of the Department of Beach Safety Scott Petersohn, that Mr. Coffin knew that I had violated no specific policy of the County prior to serving the NOI⁴, and that Mr. Coffin's statements in the NOI were intentionally untruthful⁵.

As a result of my response, Mr. Coffin reportedly "self reported" himself to your office for these criminal violations and further admits that he "reopened" the investigation solely in response to the specific allegation contained on page one of my letter which claimed that Mr.

⁴ Sworn Statement of the Director of the Department of Beach Safety, Kevin Sweat, dated December 13, 2011 Page 76 Lines 1-25,

⁵ Sworn Statement of the Director of the Department of Beach Safety, Kevin Sweat, dated December 13, 2011 Page 32 Lines 2-25, Page 33 Lines 1-18, Page 71 Lines 12-25 Page 72 Line 1.

Coffin manufactured the alleged false statements in violation of Chapters 112.532 and 838.022 Florida Statutes⁶.

On December 13, 2011 Director Sweat, who attended these discussions, gave a sworn statement under oath in this matter. Director Sweat accurately and truthfully recalls the questions by Mr. Coffin to myself and Deputy Chief Scott Petersohn as being specifically tied to a then pending litigation of the County referred to as the Ashley Drury case and not the general question Mr. Coffin falsely stated in his NOI.

A: "...the question I specifically remember being asked was, was Mr. Gardner gonna have his name come up in any way, shape or form in the Ashley Drury lawsuit; whether he was going to be involved or have knowledge that should have been shared with us involving Ashley Drury."

Q: "Okay. So your recollection is that it was -- the comment was specifically tied to that lawsuit?"

A: "Yes sir."⁷

Q: "And how certain are you of your recollection that that was the way the question was asked?"

A: "I'm fairly positive because he asked a very similar question to Supervisor Petersohn at the same time."⁸

On December 13, 2011 Mr. Coffin gave a sworn statement under oath in an official proceeding wherein Mr. Coffin also claims that the alleged general question of "whether there was anything in my background which could cause embarrassment to the Division" was also posed to the now acting Deputy Chief of the Department of Beach Safety, Scott Petersohn.

A: "And I asked both candidates if there was anything else that could come back to embarrass us or the agency that they had knowledge of."

Deputy Chief Scott Petersohn gave sworn statement on December 6, 2011. In his sworn statement Deputy Chief Petersohn, recalls, consistent with my and Director Sweat's sworn statements, that the question by Mr. Coffin was specifically tied to the then pending litigation of the County referred to as the Ashley Drury case.

6 Sworn Statement of the Director of the Department of Public Protection McKinley Coffin, dated December 13, 2011 Page 7 Lines 6-19.

7 Sworn Statement of the Director of the Department of Beach Safety, Kevin Sweat, dated December 13, 2011 Page 32 Lines 6-14,

8 Sworn Statement of the Director of the Department of Beach Safety, Kevin Sweat, dated December 13, 2011 Page 32 Lines 21-25,

Q: "In your discussion with Director Coffin, do you remember him asking you any questions?"

A: "Yes."

Q: "Tell me what you remember him asking."

A: "I don't remember the exact phrasing, but it was something to the effect, was my name ever going to come up in any of the stuff that was going on at the time, which was the sex scandal with Ashley Drury and Jecoa Simmons and Robert Tameris."⁹

Chapter 838.022 Florida Statutes provides:

838.022. Official misconduct

(1) It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to:

(a) Falsify, or cause another person to falsify, any official record or official document;

(b) Conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act; or

(c) Obstruct, delay, or prevent the communication of information relating to the commission of a felony that directly involves or affects the public agency or public entity served by the public servant.

(2) For the purposes of this section:

(a) The term "public servant" does not include a candidate who does not otherwise qualify as a public servant.

(b) An official record or official document includes only public records.

(3) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. (emphasis added)

Chapter 837.02 Florida Statutes provides:

⁹ Sworn Statement of the Deputy Chief of the Department of Beach Safety, Scott Petersohn, dated December 6, 2011 Page 13 Lines 6-14,

837.02. Perjury in official proceedings

(1) Except as provided in subsection (2), *whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.*

(3) *Knowledge of the materiality of the statement is not an element of the crime of perjury under subsection (1) or subsection (2), and the defendant's mistaken belief that the statement was not material is not a defense.*(emphasis added)

As a result of Mr. Coffin's false statements made in both a public document and in an official proceeding under oath, I respectfully submit and charge Mr. Coffin with violations of Chapters 838.022 and 837.02 Florida Statutes and request that an investigation be conducted into these matters. To assist you with your investigation I have attached copies of the NOI letter containing the false statements, my Response dated October 24, 2011, my affidavit dated February 21, 2012, as well as the Sworn Statements of the Director of the Department of Beach Safety, Kevin Sweat, Deputy Chief of the Department of Beach Safety, Scott Petersohn and Director of the Department of Public Protection McKinley Coffin.

If there is any further assistance I may provide please feel free to contact me at your convenience.

Respectfully,



Richard S. Gardner